

HOUSE BILL REPORT

HB 2273

As Reported by House Committee On:
Judiciary

Title: An act relating to the medicaid fraud control unit.

Brief Description: Concerning the medicaid fraud control unit.

Sponsors: Representatives Goodman, Klippert, Kilduff, Peterson, Ryu, Haler, Young, Jinkins and Ormsby; by request of Attorney General.

Brief History:

Committee Activity:

Judiciary: 1/10/18, 1/23/18 [DPS].

Brief Summary of Substitute Bill

- Requires the Attorney General to establish and maintain a Medicaid Fraud Control Unit (MFCU) and specifies the authority and duties of the MFCU.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Klippert, Muri, Orwall, Shea and Valdez.

Staff: Edie Adams (786-7180).

Background:

State law establishes a number of civil and criminal penalties for fraudulent acts related to the Medicaid program. Medicaid service providers that obtain payments through willful false statements, willful misrepresentation or concealment of material facts, or other fraudulent schemes must repay any excess payments received and may be assessed civil penalties up to three times the amount of the excess payments. In addition, the Medicaid Fraud False Claims Act establishes civil liability for a number of false or fraudulent activities involving claims for payment to the state Medicaid program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Criminal provisions relating to Medicaid fraud make it a class C felony for any person to knowingly make a false statement or conceal material facts in an application for payment, knowingly make a false statement regarding facts used to determine rights to payments, or have knowledge of the concealment of information with the intent to fraudulently receive unauthorized payments. Other criminal prohibitions applicable to Medicaid fraud include prohibitions relating to inappropriate rebating and referral practices and knowingly charging excessive rates for services to patients.

The Medicaid Fraud Control Unit (MFCU) within the Office of the Attorney General is responsible for both civil and criminal investigation and prosecution of health care provider fraud committed against the state's Medicaid program. In addition, the MFCU monitors complaints of resident abuse or neglect in Medicaid-funded nursing homes, adult family homes, and boarding homes. The MFCU is funded through a federal matching grant. The state provides 25 percent of the funding, which comes from Medicaid fraud recoveries deposited in the Medicaid Fraud Penalty Account. The federal government provides a grant funding the remaining 75 percent of the MFCU.

Under federal law, all states must operate MFCUs that effectively carry out the requirements of federal law with regard to the investigation and prosecution of Medicaid provider fraud and patient abuse and neglect, unless the Secretary of Health and Human Services determines the state can operate without a MFCU. The Office of the Inspector General is responsible for certifying state MFCUs as meeting federal requirements and eligibility for federal grants. In order to receive federal grants, a state MFCU must meet a number of requirements under the Social Security Act and federal regulations. These include requirements that the MFCU have either statewide authority to prosecute criminal cases or procedures for referring suspected criminal violations to an agency with such authority.

Summary of Substitute Bill:

The Attorney General must establish and maintain a Medicaid Fraud Control Unit (MFCU) within the Office of the Attorney General.

The MFCU has the authority and criminal jurisdiction to investigate and prosecute Medicaid provider fraud, as well as other health care program fraud and abuse and neglect matters where authority is granted by the federal government. The MFCU must cooperate with federal and local investigators and prosecutors and coordinate local, state, and federal investigations and prosecutions involving such fraud.

The Attorney General must employ and train personnel to achieve the purposes of the act, including attorneys, investigators, auditors, clerical support, and other necessary personnel. Medicaid fraud control investigators appointed by the Attorney General are authorized to detect, investigate, and apprehend when it appears a criminal violation relating Medicaid fraud, Medicaid managed care fraud, Medicare fraud, or abuse or neglect has been or is about to be committed.

The MFCU must protect patient privacy and establish procedures to ensure confidentiality of records in accordance with state and federal laws, including the federal Health Insurance Portability and Accountability Act and the Washington Uniform Health Care Information Act.

Substitute Bill Compared to Original Bill:

The original bill included a provision designating the Medicaid Fraud Control Unit an appropriate law enforcement agency for the purposes of mandatory reporting of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Medicaid Fraud Control Unit (MFCU) has been in existence for 40 years but there is no enabling statute specifically laying out its authority and powers. States are required to have an effective MFCU as a condition to receiving federal Medicaid program funding. The MFCU is a stand-alone unit within the Office of the Attorney General responsible for investigating and prosecuting health care provider fraud and abuse and neglect cases in residential facilities. The MFCU is revenue generating, paying for its own operations as well as generating revenue for the Medicaid program.

This bill sets forth in one section the powers of the MFCU and the limits of those powers. The Washington MFCU is the only one in the country that does not have law enforcement authority, and this lack of authority significantly hampers the MFCU's ability to pursue and conduct investigations. The MFCU has to involve local law enforcement, which slows down investigations and imposes a burden on local law enforcement agencies. Providing the MFCU with the authority to engage in essential enforcement functions will help alleviate the burden on local law enforcement, as well as enable investigation and prosecution of more complex cases.

Law enforcement agencies and prosecutors have indicated their support for the legislation. It is time to catch up with the other 49 states and give the MFCU the law enforcement powers that it needs to successfully do its job.

(Opposed) There is concern with subsection (7), which states that the MFCU is a law enforcement agency for purposes of mandatory reporting. This will create confusion for mandatory reporters regarding to whom the reports must be given. A better option would be to require law enforcement to share appropriate reports with the MFCU so there is no change regarding a mandatory reporter's obligations.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and Yasmin Trudeau and Larissa Payne, Office of the Attorney General.

(Opposed) Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.